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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,198	02/19/2004	Thomas A. Capritta	113.2172	4098
39682	7590	09/26/2006	EXAMINER	
THE TORPY GROUP, P.L. 202 N. HARBOR CITY BLVD. SUITE 200 MELBOURNE, FL 32935				LARSON, JUSTIN MATTHEW
ART UNIT		PAPER NUMBER		
				3727

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/782,198	CAPRITTA, THOMAS A.
	Examiner Justin M. Larson	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 February 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/19/04</u> .                                                 | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 2/19/04 is noted. The submission is in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, the examiner is considering the information disclosure statement.

### ***Claim Objections***

2. Claim 28 is objected to because of the following informalities: It appears as though the claim was intended to read, "... wherein the side member has indicia thereon." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 5, 7-9, 12, 13, 15, 16, 18, 19, 21, 22, 24, 25, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu-Hsien (US 2002/0084240 A1).

Regarding claims 1 and 12, Yu-Hsien discloses a container closure cap system comprising a container (4) having a bottom surface, sidewalls extending upwardly therefrom, and a top surface opposite the bottom surface, the top surface having an opening formed therein, and a container closure cap (Figure 4) matingly connected to said container and comprising a lower retaining member (3), an upper cover member (1) detachably connected to said lower retaining member, and a clip member (2)

connected to said lower retaining member, said clip member having a top member (22) extending outwardly from an outer periphery of said lower retaining member, and a side member (21) connected to and extending downwardly from the top member. Regarding the side member extending downwardly from the top member, the side member can be bent upward and downward via the flexible section (23). Even if the side member is not bent up or down, it can be considered to extend downward from the top member when the figure is rotated clockwise.

Regarding claims 2 and 13, the lower retaining member and clip member of Yu-Hsien are integrally formed or monolithic.

Regarding claims 4 and 15, the upper cover of Yu-Hsien is detachably connected to the lower retaining member using a breakaway connection [0008].

Regarding claims 5 and 16, the cap and container of Yu-Hsien are threaded.

Regarding claims 7 and 18, the side member (21) of Yu-Hsien is flared outwardly.

Regarding claim 8, the side member of Yu-Hsien could be bent downward to a position in which it was substantially parallel to the sidewalls of the container.

Regarding claims 9 and 19, the top member and side member of Yu-Hsien have a thickness substantially similar to the thickness of the lower retaining member.

Regarding claims 21, 22, 24, 25, and 27, the method steps of the claims are satisfied during the normal operation and use of the closure cap of Yu-Hsien, which has already been shown to have the claimed structural features.

5. Claims 1, 2, 5, 6, 8, 9, 12, 13, 16, 17, 19, 21, 22, 25, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Simmons (US 4,955,572 A).

Regarding claims 1 and 12, Simmons discloses a container closure cap system comprising a container (1) having a bottom surface, sidewalls extending upwardly therefrom, and a top surface opposite the bottom surface, the top surface having an opening formed therein, and a container closure cap matingly connected to said container and comprising a lower retaining member (8), an upper cover member (4) detachably connected to said lower retaining member, and a clip member connected to said lower retaining member, said clip member having a top member (11) extending outwardly from an outer periphery of said lower retaining member, and a side member (12) connected to and extending downwardly from the top member.

Regarding claims 2 and 13, the lower retaining member and clip member of Simmons are integrally formed or monolithic.

Regarding claims 5 and 16, the cap and container of Simmons are threaded.

Regarding claims 6 and 17, the closure cap of Simmons includes a support rib (13) extending between an inner surface of said top member and an inner surface of the side member.

Regarding claim 8, the side member of Simmons extends substantially parallel to the sidewalls of the container.

Regarding claims 9 and 19, the top member and side member of Simmons have a thickness substantially similar to the thickness of the lower retaining member.

Regarding claims 21, 22, 25, and 26, the method steps of the claims are satisfied during the normal operation and use of the closure cap of Simmons, which has already been shown to have the claimed structural features.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 10, 14, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Yu-Hsien or Simmons as applied above in view of Kessler (US 4,768,666 A).

Regarding claims 3, 14, and 23, Yu-Hsien and Simmons both disclose the claimed invention except for the connection between the upper cover member and the lower retaining member being a perforated connection. Kessler, however, teaches that a perforated connection is an old and well-known means for securing an upper cover member to a lower retaining member (col. 3 line 30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the connection of either Yu-Hsien or Simmons a perforated connection, as taught by Kessler, in order to utilize an old and well known means for ensuring that the contents of the container had not been tampered with prior to their initial consumption.

Regarding claim 10, Yu-Hsien and Simmons both disclose the claimed invention except for the cap system being made from polypropylene. Kessler, however, teaches

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that polypropylene can be used to form such a cap system. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the cap system of either Yu-Hsien or Simmons from polypropylene, as taught by Kessler, since polypropylene is a well known and suitable material for such an application.

8. Claims 11, 20, and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons in view of Cetera (US 6,685,374 B1).

Simmons discloses the claimed invention except for there being indicia on the side member. Cetera, however, teaches that it is known in the art to provide indicia on such side members. Cetera discloses a pen having a clip member like that of Simmons, the clip member having indicia printed thereon (col. 2 line 25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include indicia on the clip member of Simmons, as taught by Cetera, in order to display a company logo or provide an indication of the contents of the container.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML  
9/15/06

*nathan j. newhouse*  
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SUPERVISORY PATENT EXAMINER